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SUPREME COURT OF THE UNITED STATES.

No. ~~334.~~ ~~349~~ 131.

MICHAEL THOMPSON, PLAINTIFF IN ERROR,

vs.

THOMAS F. BOWIE.

IN ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

GOVERNMENT PRINTING OFFICE.

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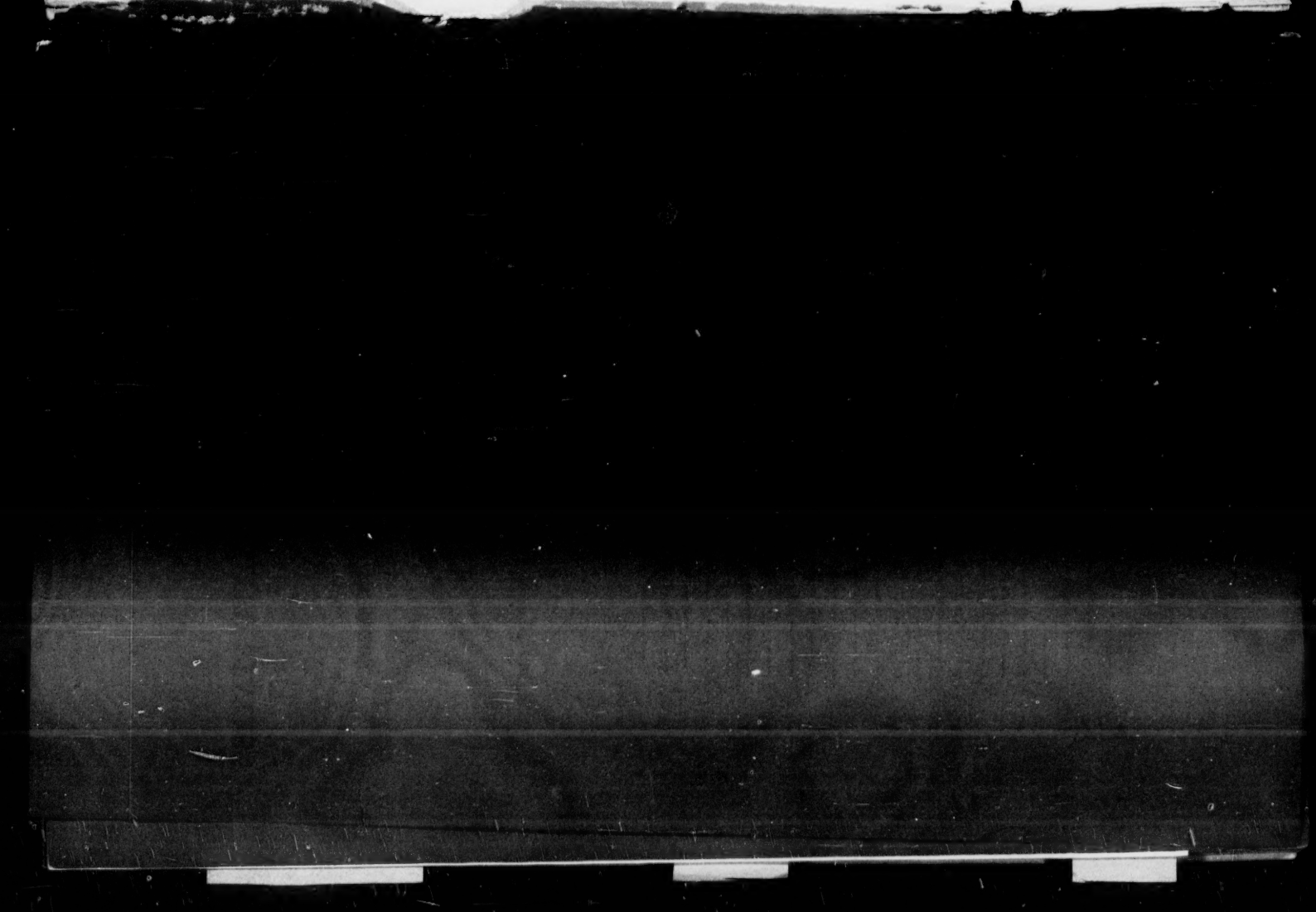

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1 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the justices of the supreme court of the District of Columbia, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said supreme court before you between Michael Thompson, plaintiff, and Thomas F. Bowie, defendant, a manifest error hath happened, to the great damage of the said Michael Thompson, as by his complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in said Supreme Court, to be then and there held, and the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, which of right and according to the law and custom of the United States should be done.

Witness the Honorable James Wayne, senior justice of the said
2 Supreme Court of the United States, this seventh day of November, in the year of our Lord one thousand eight hundred and sixty-four, and of the independence of the United States the eighty-ninth.

[SEAL.] R. J. MEIGS, *Clk.*

UNITED STATES OF AMERICA, *ss:*

To Thomas F. Bowie, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the District of Columbia, wherein Michael Thompson is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness David K. Cartter, chief justice of the supreme court of the District of Columbia, the seventh day of November, 1864.

D. K. CARTTER, *Ch'f Justice.*

I acknowledge due and legal service of the within citation, November seventh, 1864.

SAM'L L. PHILLIPS,
Attorney for Defendant.
W. S. COX, *for same.*

3 Know all men by these presents that we, Michael Thompson and John N. Trook, are held and firmly bound unto Thomas F. Bowie in the sum of two hundred dollars, lawful money, to be paid to the said Thomas F. Bowie, his certain attorney, executors, administrators, or assigns, to which payment, well and truly to be made and done, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this seventh day of November, 1864.

Whereas lately at a supreme court of the District of Columbia, in a suit depending in the said court, wherein the said Michael Thompson was plaintiff and the said Thomas F. Bowie was defendant, judgment was rendered against the said plaintiff, and he having obtained a writ of error, and filed a copy thereof in the clerk's office of the said supreme court, to reverse the judgment in the aforesaid suit, and a citation, directed to the said Thomas F. Bowie, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next:

Now the condition of the above obligation is such that if the said
4 Michael Thompson shall prosecute said writ with effect, and answer all damages and costs if he fails to make his plea good, then the above obligation to be void; otherwise, to be and remain in full force and virtue.

MICHAEL THOMPSON. [SEAL.]
JOHN N. TROOK. [SEAL.]

Signed, sealed, and delivered in presence of.

NOV. 7TH, 1864.

The foregoing bond is hereby approved.

D. K. CARTTER, *Ch'f Justice.*

5 *Original process.*

UNITED STATES OF AMERICA, *District of Columbia, to wit:*

To the marshal of the District of Columbia, greeting:

We command you that you take Thomas F. Bowie, late of Washington County, if he shall be found within the county of Washington, in your district, and him safely keep, so that you have his body before the circuit court of the District of Columbia, to be held for the county aforesaid, at the city of Washington, on the first Monday of May next, to answer unto Michael Thompson in a plea of trespass on the case, &c. Hereof fail not at your peril, and have you then there this writ.

Witness Jas. Dunlop, esquire, chief justice of our said court, at the city of Washington, the 31st day of Jan'y, anno Domini one thousand eight hundred and sixty.

Issued the 1st day of Feb'y, 1860.

JNO. A. SMITH, *Cl'k.*

Endorsed: Cepi and Chilton and M. and Carlisle and Maury. W. Selden, marshal.

Order to file declaration.

The clerk will file the within nar. in the within case.

M. THOMPSON, *P'f's Att'y.*

Filed 30th May, 1860.

Declaration.

DISTRICT OF COLUMBIA, *Washington County, to wit:*

Thomas F. Bowie, late of the county aforesaid, was attached to
6 answer unto Michael Thompson, in a plea of trespass on the case upon promises, and so forth. And thereupon the said plaintiff, by Michael Thompson, his attorney, complains that whereas, heretofore, to wit, on the first day of January, in the year of our Lord eighteen hundred and fifty-seven, to wit, at the county aforesaid, he, the said Bowie, made his cer-

tain note in writing, commonly called a promissory note, his own proper handwriting being thereunto subscribed, bearing date the day and year aforesaid; and thereby, then and there, promised to pay to Francis Steer, by the name of Francis Steer, or order, thirty days after the date thereof, the full and just sum of one thousand dollars, current money of the United States, for value received; and then and there delivered the said note to the said Steer. And the said Steer, to whom or to whose order the payment of the sum of money in the said note mentioned was to be made, afterwards and before the payment thereof, and before the time limited in the said note for the payment thereof, to wit, on the day and year aforesaid, at the county aforesaid, endorsed the said note, his own proper handwriting being thereunto subscribed, and thereby ordered and appointed the said sum of money in the said note mentioned to be paid to the said plaintiff, and then and there delivered the said
7 note so endorsed to the said plaintiff. And the plaintiff avers that afterwards, when the said note became due and payable according to the tenor and effect thereof, to wit, on the third day of February, in the year eighteen hundred and fifty-seven, he showed and presented the said note, with the endorsement so made thereon as aforesaid, to the said maker of the said note, and then and there required the said maker of said note to pay the same; but the said maker did not then, or at any time since, pay the same or any part thereof to the said plaintiff, but then and there wholly refused so to do. Of all which premises the said defendant afterwards, to wit, on the day and year last aforesaid, at the county aforesaid, had notice, by reason whereof, and by force of the statute in such case made and provided, the said defendant became liable to pay said sum of money in the said note mentioned to the said plaintiff, according to the tenor and effect of the same and the said endorsement thereon; and being so liable, in consideration thereof, then and there undertook and promised to pay the same to the said plaintiff, according to the tenor and effect thereof and the endorsement thereon, whenever afterwards he should be thereto requested.

2d count.—And whereas the defendant afterwards, to wit, on the
8 third day of February, in the year eighteen hundred and fifty-seven, at the county aforesaid, was indebted unto the said plaintiff in another sum of one thousand dollars, like money, for the like sum of money, by the plaintiff to and for the use of the defendant before that time paid, laid out, and expended, at the special instance and request of the defendant, and for other money by the plaintiff before the time lent and advanced to the defendant at his special instance and request, and for other money by the defendant before that time had and received to the use of the plaintiff; and being so indebted, the defendant, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, at the county aforesaid, undertook and promised the plaintiff to pay him the said several sums of money in this count mentioned when afterwards he should be thereunto required.

3d count.—And whereas the defendant afterwards, that is to say, on the third day of February, in the year aforesaid, at the county aforesaid, accounted with the plaintiff of and concerning divers sums of money from the said defendants to the said plaintiff before that time due and owing,
9 and then in arrear and unpaid, and upon such accounting the said defendant was then and there found in arrear and indebted to the said plaintiff in the further sum of one thousand dollars; and being so found in arrear and indebted, the said defendant afterwards, that is to say, on the day and year last mentioned, at the county aforesaid, in consideration thereof, undertook and then and there faithfully promised the plaintiff to pay him said last-mentioned sum of money when thereto afterwards required.

4 *count, on note at* 60 *days.*—And thereupon the said plaintiff, by M. Thompson, his attorney, also complains that whereas, heretofore, to wit, on the first day of January, in the year of our Lord eighteen hundred and fifty-seven, to wit, at the county aforesaid, he, the said Bowie, made his certain note in writing, commonly called a promissory note, his own proper handwriting being thereunto subscribed, bearing date the day and year aforesaid, and thereby then and there promised to pay Francis Steer or order, sixty days after the date thereof, the full and just sum of one thousand dollars, current money of the United States, for value received, and then and there delivered the said note to the said Steer. And the said Steer, to whom or whose orders the payment of the said sum of money in the said
10 note mentioned was to be made, afterwards and before the payment thereof, and before the time limited in the said note for the payment thereof, to wit, on the day and year aforesaid, at the county aforesaid, endorsed the said note, his own proper handwriting being thereunto subscribed, and thereby ordered and appointed the said sum of money in the said note mentioned to be paid to the said Thompson. And the plaintiff avers that afterwards, when said promissory note became due and payable according to the tenor and effect thereof, to wit, on the fifth day of March, in the year eighteen hundred and fifty-seven, he showed and presented the said note, with the endorsements so made thereon as aforesaid, to the said maker of the said note, and then and there required the said maker of the said note to pay the same; but the said maker did not then, or at any time since, pay the same or any part thereof to the said plaintiff, but then and there wholly refused so to do. Of all which premises the said defendant, afterwards, to wit, on the day and year last aforesaid, at the county aforesaid, had notice; by reason whereof, and by force of the statute in such case made and provided, the said defendant became liable to pay the said sum of money in the said note mentioned to the said plaintiff, according to the tenor and effect of
11 the same and of the said endorsement thereon; and being so liable, in consideration thereof, then and there undertook and promised to pay the same to the said plaintiff, according to the tenor and effect thereof and the endorsement thereon, whenever afterwards he should be thereto required.

5th count; money paid, lent, and advanced, had and received.—And whereas the defendant afterwards, to wit, on the fifth day of March, in the year eighteen hundred and fifty-seven, at the county aforesaid, was indebted unto the plaintiff in another sum of one thousand dollars, like money, for the like sum of money, by the plaintiff, to and for the use of the defendant, before that time paid, laid out, and expended, at the special instance and request of the defendant, and for other money by the plaintiff before that time lent and advanced to the defendant, at his special instance and request, and for other money by the defendant before that time had and received to the use of the plaintiff; and being so indebted, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, at the county aforesaid, undertook and promised the plaintiff to pay him the said several sums of money in this count mentioned when afterwards he should be thereunto required.

6 *count; account stated.*—And whereas the defendant, afterwards,
12 that is to say, on the fifth day of March, in the year last aforesaid, at the county aforesaid, accounted with the plaintiff of and concerning divers sums of money from the said defendant to the said plaintiff, before that time due and owing, and then in arrear and unpaid, and upon such accounting the said defendant was then and there found in arrear and indebted to the said plaintiff in the further sum of one thousand dollars; and being so found in arrear and indebted, the said defendant afterwards, that is to say,

on the day and year last mentioned, at the county aforesaid, in consideration thereof, undertook and then and there faithfully promised said plaintiff to pay him said last-mentioned sum of money, when thereunto afterwards required.

7th count, on note at 90 *days.*—And thereupon the said plaintiff, by M. Thompson, his attorney, also complains that whereas heretofore, to wit, on the first day of January, in the year of our Lord eighteen hundred and fifty-seven, to wit, at the county aforesaid, he, the said Bowie, made his certain note in writing, commonly called a promissory note, his own proper handwriting being thereunto subscribed, bearing date the day and year aforesaid, and thereby then and there promised to pay to Francis Steer,
13 by the name of Francis Steer, or order, ninety days after the date thereof the full and just sum of one thousand dollars, current money of the United States, for value received, and then and there delivered the said note to the said Steer. And the said Steer, to whom or to whose order the payment of the said sum of money in the said note mentioned was to be made, afterwards and before the payment thereof, and before the time limited in the said note for the payment thereof, to wit, on the day and year aforesaid, at the county aforesaid, endorsed the said note, his own proper handwriting being thereunto subscribed, and thereby ordered and appointed the said sum of money in the said note mentioned to be paid to the said Thompson, and then and there delivered the said note so endorsed to the said Thompson. And the plaintiff avers that afterwards, when said promissory note became due and payable according to the tenor and effect thereof, to wit, on the fourth day of April, in the year eighteen hundred and fifty-seven, he showed and presented the said note, with the endorsements so made thereon as aforesaid, to the said maker of the said note, and then and there required the said maker of the said note to pay the same; but the
14 said maker did not then, or at any time since, pay the same or any part thereof to the said plaintiff, but then and there wholly refused so to do. Of all which premises the said defendant afterwards, to wit, on the day and year last aforesaid, at the county aforesaid, had notice; by reason whereof, and by force of the statute in such case made and provided, the said defendant became liable to pay the said sum of money in the said note mentioned to the said plaintiff, according to the tenor and effect of the same and the said endorsement thereon; and being so liable, in consideration thereof, then and there undertook and promised to pay the same to the said plaintiff according to the tenor and effect thereof and the endorsement thereon, whenever afterwards he should be thereto requested.

8th count; money paid, lent, and advanced, had and received.—And whereas the defendant afterwards, to wit, on the fourth day of April, in the year eighteen hundred and fifty-seven, at the county aforesaid, was indebted unto the said plaintiff in another sum of one thousand dollars, like money, for the like sum of money, by the plaintiff, to and for the use of the defendant, before that time paid, laid out, and expended, at the special instance and request of the defendant, and for other money by the plaintiff before the time
15 lent and advanced to the defendant, at his special instance and request, and for other money by the defendant before that time had and received to the use of the plaintiff and being so indebted, the defendant, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, at the county aforesaid, undertook and promised the plaintiff to pay him the said several sums of money in this count mentioned when afterwards he should be thereunto required.

9th count; account stated.—And whereas the defendant, afterwards, that is to say, on the fourth day of April, in the year last aforesaid, at the county aforesaid, accounted with the plaintiff of and concerning divers sums of

money from the said defendant to the said plaintiff before that time due and owing, and then in arrear and unpaid, and upon such accounting the said defendant was then and there found in arrear and indebted to the plaintiff in the further sum of ten thousand dollars, and being so found in arrear and indebted, the said defendant afterwards, that is to say, on the day and year last mentioned, at the county aforesaid, in consideration thereof, undertook, and then and there faithfully promised said plaintiff, to pay him said
16 last-mentioned sum of money when thereto afterwards required. Yet the defendant, the said several sums of money herein mentioned, or any part thereof, although often thereto requested, to wit, on the day and year last aforesaid, at the county aforesaid, and often afterwards, has not paid, but the same, or any part thereof, to pay has hitherto wholly refused, and still does refuse, to the damage of the plaintiff in the sum of ten thousand dollars, current money, and therefor he brings suit, and so forth.

M. THOMPSON, *for Plaintiff.*

Plea and issue.

In the circuit court of the District of Columbia, October term, 1860.

Plea: "Non assumpsit and issue."

Trial.

In the supreme court of the District of Columbia, holding a circuit court of said district.

TUESDAY, *April* 26, 1864.

Come, as well the plaintiff, by his attorney, Mr. Brent, as the defendant, by his attorneys, Messrs. W. S. Cox and Samuel L. Phillips; and thereupon comes a jury of good and lawful men of the District of Columbia, to wit, James Towles, Francis B. Lord, William Douglas, Humphrey O. Whitmore, Willard Drake, Lewis Payne, Henry Thorn, Thomas C. Wells, John P. Murphy, John E. Neal, Edward H. Edelin, and William H. Langley, who,
17 being elected and sworn to try the issue above joined, after hearing part of the evidence, are from rendering their verdict respited till to-morrow at the meeting of the court.

WEDNESDAY, *April* 27, 1864.

And now again come here the parties aforesaid, and the same jury who were respited yesterday; and after a further hearing of the case, the said jury is again respited until to-morrow at the meeting of the court.

THURSDAY, *April* 28, 1864.

And now again come here the parties aforesaid, by their attorneys aforesaid, and the same jury who were respited yesterday, and they are again respited till to-morrow morning at the meeting of the court.

FRIDAY, *April* 29, 1864.

And now again come here the parties aforesaid, by their attorneys aforesaid, and the same jury who were respited yesterday; and after a further hearing of the case, the said jury from rendering their verdict are respited till to-morrow at the meeting of the court.

Verdict and judgment.

SATURDAY, *April* 30, 1864.

And now again come here the parties aforesaid, by their attorneys aforesaid and the same jury who from rendering their verdict were respited yes-

terday, and who, upon their oath aforesaid, say that the defendant did not assume and undertake in manner and form as in pleading the plaintiff alleges.

18 It is therefore considered by the court that the defendant go thereof without day, and recover against the plaintiff the sum of $58 31 cents for his costs and charges by him about his defense expended, and that he have execution thereof.

From which judgment the plaintiff prays an appeal to the general term, and the same is allowed on giving bond.

Proceedings before the supreme court of the District of Columbia in general term, at October term, 1864.

Present: Chief Justice Cartter and Justices Olin and Wylie. Absent: Justice Fisher.

FRIDAY, *November* 4, 1864.

MICHAEL THOMPSON, pl'ff and appellant, *v.* THOMAS F. BOWIE, def't and appellee. } Appeal on exceptions.

Come, as well the plaintiff, by his attorney, Mr. Brent, as the defendant, by his attorneys, Messrs. W. S. Cox and Samuel L. Phillips; and thereupon the case is argued by Mr. Brent for the plaintiff and appellant, and by Mr. Phillips for the defendant and appellee.

Judgment affirmed.

SATURDAY, *November* 5, 1864.

And now again come here the parties aforesaid, by their attorneys aforesaid; whereupon the argument is resumed and concluded by Mr. W. S. Cox by the defendant and appellee, and reply being declined by the appel-

19 lant, it is, upon mature consideration of the matters of error alleged by the appellant, considered by the court that neither in the proceedings of the justice who presided on the trial in the circuit court, nor in the judgment of said court, is there error; that said judgment be in all things affirmed; that the plaintiff take nothing by his writ, and that the defendant go thereof without day and recover against the plaintiff his costs by him about his defense expended, and that he have execution thereof.

Exceptions.

THOMPSON *v.* BOWIE. } Plaintiff's exceptions. No. 1.

At the trial of this cause the plaintiff read in evidence three promissory notes, dated 1 Jan'y, 1857, made part hereof, to wit:

1.

$1,000. WASHINGTON, *Jan.* 1*st*, 1857.

Thirty days after date I promise to pay Francis Steer, or order, the sum of one thousand dollars for value received.

THOMAS F. BOWIE.

Witness: J. W. P.

Endorsed: Pay to Michael Thompson.

FRANCIS STEER.

2.

$1,000. WASHINGTON, *Jan.* 1*st*, 1857.

Sixty days after date I promise to pay to Francis Steer, or order, the sum of one thousand dollars for value received.

20 THOMAS F. BOWIE.

Witness: J. W. P.

Endorsed: Pay to Michael Thompson.

FRANCIS STEER.

3.

$1,000. WASHINGTON, *Jan.* 1*st*, 1857.

Ninety days after date I promise to pay to Francis Steer, or order, the sum of one thousand dollars for value received.

THOMAS F. BOWIE.

Witness: J. W. P.

Endorsed: Pay to Michael Thompson.

FRANCIS STEER.

Proof of indorsement.

We hereby agree that James W. Pumphrey, if sworn on this trial, would prove the signature of Frank Steer, as endorser of the three notes on which the suit of Michael Thompson is brought against Thomas F. Bowie, and that in witnessing the assignment Pumphrey signed merely his initials on the face of the note instead of on the back, by mistake, and that this agreement is intended to dispense with the presence of said Pumphrey on the trial of said cause. And further agreed that said Pumphrey was the witness whose name is subscribed as a witness to the signature of said Steer, as the same appears on said three notes.

In consideration of the foregoing agreement, it is conceded by the counsel of said Thompson that the said Pumphrey would further prove that

21 W. H. Thomas, who testified in a suit brought on the said notes by same plaintiff *vs.* same def't, in Prince George's County, Maryland, is now in the so-called Confederate States and beyond the Federal lines, the said counsel reserving all and every exception to said testimony relating to said Thomas which might or could be made if said Pumphrey were in court testifying to the absence of said Thomas.

April 25, 1864.

R. J. BRENT, *for Pl'ff.*
W. S. COX, *for Deft.*

And the plaintiff gave evidence tending to prove that the said notes were signed in the proper handwriting of the defendant and that the endorsement thereon is in the proper handwriting of Francis Steer, the payee named therein. And the plaintiff then rested.

And the defendant then offered to prove, by a competent witness, that at the date of said notes the said Steer was the keeper of a gambling house in Washington City; but the plaintiff objected to said offered evidence, and the court overruled said objection and admitted the evidence to be given as aforesaid.

Pl'ff's 1st exception.—Thereupon the plaintiff excepts, and this his

22 bill of exceptions is signed, sealed, and enrolled this 29th April, 1864.

[SEAL.] D. K. CARTTER, *Chief Justice.*

Plaintiff's 2d exception.—After the ruling of the court as stated in the first bill of exceptions, made a part hereof, the defendant gave evidence, by several witnesses, tending to prove that the said Steer kept a gambling house in Washington City at the time of the date of the said notes, and was not engaged in any other business to the knowledge of the witnesses, and had no property to their knowledge, and that the defendant was at a social entertainment on the night of the 31st of December, 1856, and became grossly intoxicated, so that, in the opinion of said witnesses, he was unfit to transact business, and that he remained in such condition when he left the place of said entertainment with the other guests who were there, and that he left in such condition between one and two o'clock in the morning of the 1
23 Jan'y, 1857, and also that the body of said notes was written in the handwriting of John R. James, who not only frequented the gaming house of the said Steer, but other gaming houses; and then gave evidence to prove that said James was a gambler by profession. And the defendant then offered to prove that a note dated on the 1 Jan'y, 1857, for $1,000, was given by the defendant, payable to John Campbell, and endorsed by him, to one Horace L. Johnson, and that said Campbell was a frequenter of the said gaming house and assisted in dealing for the said Steer. And the plaintiff objected to said note to John Campbell being admitted in evidence, but the court overruled said objection and admitted the said note to be read in evidence. And thereupon the plaintiff excepts, and this his bill of exception is signed, sealed, and enrolled this 29th April, 1864.

[SEAL.] D. K. CARTTER.

Plaintiff's 3 exception.—After the evidence stated in the aforegoing exception, made a part hereof, the defendant offered to prove by Robert
24 Bowie, a brother of the defendant, that whenever the said defendant was under the influence of liquor he had a propensity to gamble; but the plaintiff objected, and the court overruled said objection and allowed the evidence to be given as offered. And thereupon the plaintiff excepts, and this his bill of exceptions is signed, sealed, and enrolled this 29th April, 1864.

[SEAL.] D. K. CARTTER, *Ch'f Justice.*

Plaintiff's 4th exception.—After the evidence stated in the aforegoing exceptions, the said witness, Robert Bowie, further testified, in answer to an interrogatory by Mr. Cox, counsel for defendant, objected to by Mr. Brent, but allowed by the court, that the defendant, when under the excitement of wine or spirits, is given to the habit of going into gambling houses, faro banks, &c., in this city and elsewhere, but not at any other times, being, as far as witness knew, always in that condition when he went to such places; that witness was a great deal with defendant when he was in Con-
25 gress; that witness lived here and in defendant's room almost every night, who frequently, when in liquor, would leave witness to go with his friends to gambling houses, and used to want witness to go with him. And, on cross-examination, witness states that defendant, when in liquor, is talkative; that he is a man of good constitution.] And to questions by the court as to the defendant's pecuniary condition in January, 1857, the witness said that he was worth one hundred and fifty thousand dollars at that time; that he was a wealthy man before the war, owning a great number of slaves, but since the war has been reduced, as all have been, to some extent; that at the time the notes sued on were given he was considered a wealthy man and in full practice as a lawyer.

In answer to a question by Mr. Brent the witness said that he had never seen the defendant try a case when he was much under the influence of liquor, he, witness, not having been in the court at Marlboro' for some

years, which was about the only court he had ever seen defendant in;
26 that the defendant was in the habit of taking something to drink before he made speeches, and witness had seen him on the public hustings when he was very foolish and ridiculous, while under the influence of liquor; that he does not recollect ever to have seen defendant in court in that condition, but does recollect of having seen him on the hustings in that condition, when he would generally act very ridiculously; that he has generally known how to make a speech no matter what his condition; that witness has never seen any of defendant's writing while under the influence of liquor so far as to make him act foolishly; that he has corresponded with defendant a great deal and is somewhat familiar with his handwriting; that he has always written a very steady hand; that defendant is a man of good constitution and strong nerves; that witness has never seen him write a note when absolutely drunk, but that a man is apt to be nervous at all times who drinks a great deal; that the signature to the notes sued on is defendant's usual handwriting or something like it. The capitals are very
27 much like his usual handwriting.

And thereupon the plaintiff gave evidence, by John M. Johnson, that the house referred to as the gambling house kept by Steer was witness's property, and in 1856 it is charged to "Tolson & Campbell," as tenants, on witness's book, in his, witness's, own handwriting, as follows: "1857. The said house is made over to Francis Steer."

And thereupon the plaintiff and defendant presented their respective prayers to the court.

Plaintiff's 1st prayer.—1. If the jury find the execution and indorsement of the notes read in evidence, then the legal presumption is that the holder thereof received the same before maturity in good faith and for a valuable consideration, and the burden of proof is on the defendant to overcome such legal presumption.

Granted.

Plaintiff's 2d prayer.—2. That there is no evidence in this cause tending to prove that the said notes, or any of them, were given by the defendant to said Steer for a gaming consideration.

Rejected.

28 *Plaintiff's 3d prayer.*—3. That if the jury are not satisfied by the evidence that Francis Steer kept a gambling house, at the date of said notes, then the drunkenness of defendant, in the manner and time stated in the evidence, cannot be relied on to invalidate the said notes in the hands of said plaintiff.

Refused by the court.

Plaintiff's 4th prayer.—4. That the only evidence in this case tending to repel the presumption of law in favor of the legality of the notes read in evidence consists of the facts that the maker of said notes was grossly intoxicated and incapable of acting with understanding at one or two o'clock on the morning of the day on which said notes were dated, and that the payee of said notes, Francis Steer, at that time kept a gambling house, and, as against a bona fide holder without notice of said facts, said facts are not legally sufficient to overcome the presumption of law in favor of the legality of said notes.

Refused by the court.

29 *Plaintiff's 5th prayer.*—5. That in the absence of all evidence to fasten notice on the plaintiff, at the time of the indorsement of said notes, of the facts given in evidence by the defendant, as aforesaid, the law presumes in favor of the legality of the consideration of said notes in favor of the holder.

Rejected.

Plaintiff's 6th prayer.—6. If the jury are not satisfied from the evidence that the said Steer kept a gambling house at the date of said notes, then there is no sufficient evidence of said notes being executed for an illegal consideration, although the jury may find that the defendant was intoxicated at the time, and in the manner stated in the evidence.

Rejected.

Plaintiff's 7th prayer.—7. That, in the absence of direct evidence of the consideration of said notes, it is competent for the jury to find that the said notes were given for a legal consideration passing between the parties, and the plaintiff, as holder of said notes, is entitled to the benefit of the presumption of legality in the consideration of the notes as evidence.

Granted, with a modification, on application of defendant, by in-
30 serting the words: "but are not bound" after the word "competent."

Defendant's prayer.

If the jury shall believe, from the evidence, that the notes on which the plaintiff has declared against the defendant in this case were given for money won by gaming, or by betting on the sides or hands of such as did game, they shall find for the defendant, notwithstanding they shall further believe that said plaintiff was not privy to the said gaming, and paid a valuable consideration for the same.

Granted by the court.

And the court granted the defendant's said prayer, and the plaintiff's 1st prayer, and the plaintiff's 7th prayer, with the qualification endorsed thereon; and the court rejected all the other prayers of the plaintiff.

Plaintiff's general exception.

To which rulings of the court, in granting defendant's prayer and in qualifying the plaintiff's 7th prayer, as aforesaid, and in rejecting the aforesaid prayers of the plaintiff, the plaintiff excepts; and the plaintiff claims the same benefit of exception as if the said rulings were severally ex-
31 cepted to in separate bills of exception, and prays that his bill of exceptions may be signed, sealed, and enrolled this 29th day of April, 1864, which is accordingly done.

[SEAL.] D. K. CARTTER, *Ch'f Justice.*

Supreme court of the District of Columbia.

MICHAEL THOMPSON }
v. }
THOS. F. BOWIE. }

Mr. MEIGS: Issue writ of error in the above case.

R. J. BRENT, *for Pl'ff in Error.*

CLERK'S OFFICE OF THE SUPREME COURT OF THE DISTRICT OF COLUMBIA, *December* 5, 1864.

I, Return J. Meigs, clerk of the supreme court of the District of Columbia, hereby certify that, in pursuance of the foregoing order, I issued the writ of error required, and that the writings annexed thereto and contained in the foregoing pages are true copies of their respective originals on file and of record in this office.

Witness my hand and the seal of said court.

[SEAL.] R. J. MEIGS, *Clerk.*

Filed December 9, 1864.

Supreme Court of the United States.

MICHAEL THOMPSON

vs.

THOMAS F. BOWIE.

WRIT OF ERROR TO SUPREME COURT OF DISTRICT OF COLUMBIA.

Brief of Counsel for Plaintiff in Error.

Michael Thompson, the plaintiff in error, sued Thomas F. Bowie on three promissory notes, each dated 1st January, 1857, and each for $1,000, due respectively at thirty, sixty, and ninety days. Defendant pleaded non-assumpsit.

The notes were all drawn payable to Francis Steer or order, who endorsed them over to plaintiff before maturity.

The plaintiff in error having proved the signature of Bowie and Steer, rested.

FIRST EXCEPTION.

The defendant offered to prove, "that at the date of said notes Steer, the payee, was the keeper of a gambling house in Washington city." Plaintiff objected, but his objection was overruled and the evidence admitted, (p. 8 of Record.)

SECOND EXCEPTION.

The defendant then offered to prove, "that the said Steer kept a gambling house at the date of the notes sued on, and was not engaged in any other business to the knowledge of the witnesses, and had no property to their knowl-

edge, and that the defendant was at a social entertainment on the night of the 31st of December, 1856, and became grossly intoxicated, so that, in the opinion of said witnesses, he was unfit to transact business, and that he remained in such condition when he left the place of said entertainment with the other guests who were there, and that he left in such condition between one and two o'clock in the morning of the 1st January, 1857; and also that the body of said notes was written in the handwriting of John R. James, who not only frequented the gaming house of the said Steer, but other gaming houses, and then gave evidence to prove that said James was a gambler by profession. And the defendant then offered to prove that a note dated on the 1st January, 1857, for $1,000, was given by the defendant, payable to John Campbell, and endorsed by him to one Horace L. Johnson, and that said Campbell was a frequenter of the said gaming house, and assisted in dealing for the said Steer. Plaintiff objected to the introduction of said note to said Campbell, but his objection was overruled and the said said note was read to the jury in evidence admitted, (p. 9 of Record.)

THIRD EXCEPTION.

The defendant offered to prove by Robert Bowie, his brother, that whenever the said defendant *was under the influence of liquor he had a propensity to gamble.* Plaintiff objected; objection overruled and evidence admitted, (p. 9, of Record.

FOURTH EXCEPTION.

The defendant offered to prove that when under the influence of liquor that his habit was to visit gambling houses, faro banks, &c., in this city and elsewhere; and that frequently, when thus excited, he wished the witness to accompany him to gambling houses. Plaintiff objected; objection overruled, and evidence admitted, (p. 9 of Record.)

This last witness proved that the defendant was a man of wealth, and that the signature of defendant on the notes is in his usual handwriting, or something like it.

The plaintiff then offered evidence tending to show that Steer, the payee, did not at the date of the notes keep the gambling-house referred to.

The plaintiff then offered prayers Nos. 2, 3, 4, 5, 6, and 7, all of which were rejected except the 7th, which was granted with a modification. (See p. 11 of Record.) The jury found

for the defendant, and the plaintiff sued out his writ of error.*

POINTS.

1. That it was error in the court below to admit evidence showing that when intoxicated, it was defendant's *propensity* to gamble. If A had money stolen, could he recover from B on proving B's propensity to steal? Could A defeat B's recovery at law, by proving that B had a propensity to make usurious contracts? Jackson vs. Smith, 7 Cowen 717

2. That it was error to admit evidence that the payee of the note kept a gambling house, not coupled with an offer to show that the defendant visited the payee's gambling saloon on the date of the execution of the notes.

An examination of the record will show that this evidence is entirely isolated and disconnected from any other fact.

3. That it was error to allow the defendant to read in evidence a note executed in favor of one Campbell, and endorsed by him to one Johnson, on proving that the said Campbell frequented the gaming house and assisted the said Steer in gambling.

Beauchamp *vs.* Parry, 1 Barn & R., 89; 6 Dowl. & Ry., 379.1 R. & M., 212.

United States *vs.* Dunn, 6 Pet., 57.

Shaw *vs.* Browne, 4 D. & R., 731; 3 Phil. Ev. 289.

Bristol *vs.* Dan., 12 Wend., 142.

4. That if there were no error in admitting this testimony, yet there was error in refusing to instruct the jury that this evidence, taken with the other facts, did not constitute sufficient evidence to prove a gaming consideration.

The plaintiff stood in court as a *bona fide* purchaser of a negotiable security, with every presumption in his favor, and a violation of law cannot be presumed.

3 Kent, 80, note a.

Swift *vs.* Tyson, 16 Pet., 1.

Endorsement presumed to be on day of date, and for valuable consideration, and onus on defendant to overturn this presumption.

6 Md., 338.

Pinkerton *vs.* Bailey, 8 Wend., 602.

Webster *vs.* Lee, 5 Mass., 335.

3 Day, 311.

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* The statute 9 Anne, ch. 14, avoiding gambling contacts, is in force in the District of Columbia as it was in Maryland. (See Kelty's Reports of Statutes.)

Direct evidence is required to overturn the presumption of the legality of a contract, and mere conjectures will not suffice.

Torringer *vs.* McBurney, 5 Cowen, 253.
Witten *vs.* Flardesty, 16 Md., 16.
Corner *vs.* Pendleton, 8 Md., 337.
United States *vs.* Dunn, 6 Pet., 57.
1 Phil. on Ev., 605, 607. Bank U.S. vs Corcoran 2. Peters 211.

Suppose all the evidence were embodied in a special demurrer, it must have been sustained. There was no connection direct or indirect shown between the gambling house of Steer and the execution of these notes, and the court should have charged the jury that the evidence was insufficient.

Stockett *vs.* Ellicott, 3 G. & J., 126.
Belt *vs.* Mariott, 9 Gill., 334.
Norton *vs.* Bowie, 3 Md., 251.
Thurston *vs.* Lloyd, 4 Md., 283.
Gray *vs.* Cook, 12 G. & J., 236.

5. That it was error to refuse to instruct the jury as asked by plaintiff, that in case they were satisfied that Steer did not keep a gambling house, that then the drunkenness of defendant on the night previous to the execution of the notes and the other circumstances did not constitute sufficient evidence to infer a gaming consideration.

BRENT & MERRICK,
For Plaintiff in Error.

SUPREME COURT OF THE UNITED STATES.

DECEMBER TERM, 1866.

MICHAEL THOMPSON, Plaintiff in Error,
vs.
THOMAS F. BOWIE, Defendant in Error,

In Error to the Supreme Court of the District of Columbia.

DEFENDANT'S BRIEF.

The cause of action in this case was three promissory notes made by the Defendant in error, dated Washington, January 1, 1857, each for the sum of one thousand dollars, payable respectively at thirty, sixty, and ninety days, to the order of Francis Steer, and by him endorsed to Michael Thompson, the Plaintiff in error.

The defence was, that the notes were founded on a gaming consideration, and therefore void in the hands of the Plaintiff.

On the trial below, the Plaintiff, who is also Plaintiff in error, gave evidence tending to prove the signatures of the maker and payee of the notes, and then rested his case.

As will appear from the bills of exceptions, the Defendant was unable to offer any direct evidence tending to prove his defence, but was compelled to resort to, and did entirely rely upon, circumstantial testimony, and which consisted of the following facts:

1st. That Steer, the payee of the notes, was the keeper of a gambling-house, in Washington City, at the date of the notes.

2d. That, at the time of the making of the notes, Steer, the payee, was not engaged in any other business than gambling, nor was he the owner of any property.

3d. That another note of the Defendant, of the same date (January 1, 1857,) as those sued on, of the same amount ($1,000) as those sued on, was given, payable to the order of one John Campbell, who was not only a frequenter of the gaming-house of Steer, but also in his employment as a dealer of faro.

4th. That the body of all four of said notes was in the handwriting of one John R. James, who was a professional gambler, and a frequenter, among other such places, of the gambling-house of the said Steer.

5th. That on the night of the 31st of December, 1856, the Defendant became grossly intoxicated—so much so that he was unfit to transact any business; and that he remained in that condition when he left the witnesses, (between one and two o'clock in the morning of the 1st of January, 1857,) and was no more seen by them that day.

6th. That whenever the Defendant was under the influence or excitement of wine or spirits, he was in the habit of going into gambling houses, faro banks, &c., and there gambling, but not at other times; that, in the knowledge of the witness, he was always in this condition when he frequented such places; that the witness was a great deal with the Defendant when he was in Congress; that he was in witness' room almost every night, and who frequently, when in liquor, would leave witness to go with his friends to gambling-houses, and request witness to go with him.

7th. That, at the date of the notes, the Defendant was wealthy—worth one hundred and fifty thousand dollars.

On this testimony, and without the Plaintiff endeavoring to rebut this case, or show in what manner he obtained possession of the notes, the case was given to the jury under the instructions set out in the record, who instantly rendered a verdict in favor of the Defendant.

So many were the exceptions of the counsel for the Plaintiff, it will be necessary for the Court to investigate almost every question presented below; and, with a view to eludicate those only which your Honors will be called upon to decide, the following observations are respectfully submitted:

By the Statute of 9 Anne, chap. 14, sec. 1, which is reported as being in force in the District of Columbia, (vide Kitty's report of Statutes p. 248,) it is enacted—

"That all notes, bills, bonds, judgments, &c., or other securities or "conveyances given, granted, drawn, or entered into, or executed by "any person or persons whatsoever, where the whole or any part of "the consideration of such conveyances or securities shall be for any "money or other valuable thing whatsoever won by gaming or play-"ing at cards, dice, tables, tennis, &c., or other game or games whatso-"ever, or by betting on the sides or hands of such as do game at any "of the games aforesaid, or for reimbursing or repaying any money "knowingly lent or advanced at the time and place of such play, to "any person or persons so gaming or betting as aforesaid, or that shall, "during such play, so play or bet, *shall be utterly void, frustrate, and "none effect, to all intents and purposes whatsoever*, any statute law or "usage to the contrary thereof notwithstanding," &c.

The notes are not voidable, but absolutely void under any and all circumstances—being void, they can receive no new life or efficiency from the hands of an innocent holder.

It is so laid down in Story on Promissory Notes, § 192, and the authorities there cited; and also in the following additional and later authorities it is distinctly held that a negotiable note given for a gaming consideration is void in the hands of even an innocent holder for value. Unge *vs.* Boas, 13 Penn., 601; Manning *vs.* Manning, 8 Ala., 138.

These authorities, it is hoped, will conclusively establish the correctness of the ruling of the Court below in granting the only prayer asked by the Defendant, and which was excepted to by the Plaintiff.

Having stated the general grounds on which the defence is based, it is proposed next to consider the manner in which the Defendant, from the very nature of the case, was only able to prove it, and the Plaintiff's exceptions thereto.

As has been already intimated, the evidence was entirely of a circumstantial or presumptive character. The act of gaming, if it existed at all, was necessarily a secret transaction—being against the public laws, it was doubtless performed where no disinterested witness could likely be present. The testimony of the Defendant and Steer was inadmissible. James, the writer of the notes, was in the Southern States at that time, at war, and Campbell, although served with process, absented himself from Court under pain of contempt. In this state the Defendant was forced to proceed with his defence, and offered the testimony detailed in the exceptions.

It was not contended before the Court below that the testimony offered established the defence beyond all doubt, but that the numerous independent and circumstantial facts proved warranted their admission to the jury as showing the hypothesis of the defence to be exceedingly probable.

In relying upon this kind of testimony, no necessary or invariable connection of facts is required *per* Parke, J., 3 B. & Ad., 890, but simply that the circumstances should be so strong in themselves as to establish the reasonable probability of the fact intended to be proved; nor is it necessary that each fact offered in evidence should bear directly upon the issue. It is admissible if it constitutes a link in the chain of proof, although alone it might not justify a verdict in accordance with it, (1 Greenleaf on Evidence, § 51 a.) And inasmuch as the value of this evidence depends upon the ordinary affairs of life, namely, the process of ascertaining one fact from the existence of another without the aid of any rule of law, which is the exclusive province of the jury, it is submitted the Court below committed no error, unless it be shown that it had not only no tendency to prove the issue, or to corroborate any of the material facts which tend to it, (for if it had no such effect the jury would disregard it, and the Plaintiff would not be injured,) but also it should further appear, before error can be found, that it had a manifest tendency to mislead the jury.

First Exception.

The first evidence the Defendant offered was, that, at the date of the said notes, the said Steer was the keeper of a gambling-house in Washington City. To this the Plaintiff excepted.

It is not believed that the Plaintiff will seriously rely upon this exception. The jury are entitled to know the status of the parties to every transaction; and it has been frequently held that where the business of a person has any tendency to prove the issue, it is admissible. It is only a fair presumption to say that what a man does arises from his ordinary business. It ranks among those classes of presumptions which arise from the state of society, from the course of trade, and from official acts.

This testimony alone was not sufficient on which to base a verdict, but it becomes of the highest importance, and throws a flood of light on the case, when considered in connection with the other circumstances.

The Court would have positively erred if it had rejected it.

Second Exception.

After the testimony just mentioned was admitted, it was further shown, without objection, that at the time the said Steer kept a gambling-house, and at the time and place of making said notes, he was engaged in no other business than gambling; and that on the night of the 31st December, 1856, the Defendant was so grossly intoxicated as to be unfit for business, in which state he was early in the morning of the date of the notes, when last seen by the witnesses; and that the body of the three notes payable to Steer was in the handwriting of one James, a gambler by profession, and a frequenter of the house of Steer; and that one John Campbell was at the same time an employé and dealer of faro for the said Steer.

Having laid this foundation, the Defendant then offered to prove that a note of the same date as those sued on, of a like amount, (and in the handwriting of said James, although this is not mentioned in the exception.) was made payable to the said Campbell. The Plaintiff objected to said note of Campbell being read in evidence, but the Court overruled the objection, and admitted the testimony, and to this the Plaintiff excepted. The Court admitted this evidence, because it was sufficiently shown that its payee was a low gambler by profession, and without the probable means to have loaned the $1,000, or for it to have originated in any lawful transaction—from the fact that this gambler was an employé of Steer, and it therefore probably originated at the place where this man was to be found and usually employed—from the fact that it bore the same date as those of Steer, and, from the marks of resemblance between them, it was doubtless one and the same transaction—from the fact it was for a like amount as the others and in the same handwriting—from these facts it was evidently highly probable that what gave rise to one gave rise to the other, and that there could not have been such a series of transactions between worthless gamblers at their place of business without its relating to their business.

This honorable Court has lately decided in the two important cases of the Cliquot's Champagne, 3 Wallace, 114; and Fennerstein Champagne, 3 Wallace, 145, the same principle of establishing one fact by another, although occurring as between third parties. In those cases it is submitted no such necessary connection appears as is to be found in this.

The marks of identity are sufficiently distinct to admit the testimony here objected to as part of the res gestæ to the jury for what, in their estimation, it is worth.

Third and Fourth Exceptions.

After the evidence mentioned in the aforegoing exceptions, the Defendant offered to prove by one very competent to know—the brother of the Defendant—that whenever the Defendant was under the influence of wine or spirits, he had a propensity or habit of going into gambling houses, and there gambling, and which he exhibited at no other times. To this evidence the Plaintiff objected, but the Court nevertheless admitted the testimony.

It will appear by the Plaintiff's fourth exception, that the witness in stating this habit or propensity, showed in what this habit consisted, and how far it was invariable. He mentioned that he lived almost constantly with the Defendant, thus giving him an opportunity to judge of its extent and frequency, and whom he would accompany to such places.

These two prayers relating to the same subject will be best considered together.

The question raised by these prayers is this: Does evidence of the habit or invariable propensity of Defendant to gamble when intoxicated, and of the fact of intoxication at a certain time, tend, in connection with the other facts of this case, to prove a transaction of that date to have been the result of gambling? We submit it does.

The foundation for the admission of all presumptive evidence is the known relation between like causes producing like effects; and wherever it is known that a certain cause usually produces the same effect, the rules of evidence admit either to prove the other. Nor is it necessary that there should be any certain or uniform connection between the two—it is sufficient to raise it to the dignity of evidence if this connection exists in a majority of cases; or to apply the principle to this case, if it is found in human experience that men do exhibit, when under the influence of ardent spirits, the same propensities or phenomena, then if such phenomena or habits are proved in regard to them at a certain time, the fact that they do generally exhibit such habits or phenomena when under intoxication, and that they were intoxicated at that particular time, is admissible as tending to prove the issue.

It is common knowledge, that some men are invariably excited to laughter and hilarity when intoxicated, others to quarrelling, others with the same regularity to morose conduct—some to one particular line of conduct, and others to do invariably something else.

It has been decided again and again, by the Courts in civil as well as criminal cases, that wherever a particular trait of character is involved, or is illustrative of the matter disputed, there the character of the party in that particular trait may be given in evidence. McNabb vs. Lockhart, 18 Geo., 495, 1 Greenleaf on Ev., § 54. Thus, honesty in cases of felony, peaceable disposition, or quarrelsomeness when drunk, in those of riot, &c., chastity in those of seduction, and criminal conversation, &c., &c. By the admission of such testimony, the Courts recognize the principle contended for, that a man known to act usually in a certain manner under certain circumstances, will be presumed to act in the same manner when shown to be subjected to the same circumstances.

The issue in this case involves the question, Did the Defendant game on the 1st January, 1857, and were these notes given in consequence of that gaming? This is, in reality, the issue in the case, and therefore his habit or character for gaming is admissible, if he had such. The case before the Court presents itself in a stronger light than the adjudicated cases where the general character is admissible. We contract the testimony. We show first his invariable propensity or habit of

gaming when excited with spirits, and then we put him by the testimony in that condition at the time the notes are given, and show that the men with whom this transaction took place at that time were professional gamblers.

We, therefore, submit that the Court committed no error in admitting the testimony mentioned in the 3d and 4th exceptions as to the Defendant's habits of gaming when intoxicated.

The question asked by the Court as to what were the pecuniary circumstances of the Defendant at the time of making the notes, had a direct tendency to prove that the Defendant was in such affluent circumstances as to warrant the gamblers in crediting him in such large sums of money, to make him prodigal of his means, and thus, as it were, induce him to frequent such places, as well as to show that he had no need of borrowing money of such characters, and thereby rebut to some extent the presumption of the law that these notes originated in legitimate business.

It is apparent from the whole of this testimony, that while no one isolated fact would authorize the jury in finding their verdict, yet so many are the circumstances, each drawn from independent sources, that it is hardly possible in human affairs that all these things could have happened—all pointing to the same result, and yet the notes have originated in any other than a gaming transaction.

Second Prayer.

The 2d prayer of the Plaintiff asks the Court to instruct the jury that there is no evidence tending to prove the defence.

This prayer the Court refused to give, to which the Plaintiff excepted.

This was in effect a demurrer to the evidence. In many of the States the practice of granting an instruction like the present, which makes it imperative upon the jury to find a verdict one way or the other, has superceded the ancient practice of a demurrer to the evidence. It answers the same purpose, and should be tested by the same rules. Parks *vs.* Ross, 11 How., 373.

This demurrer, we submit, is faulty for two reasons:

1st. Because the presumption of law is in favor of the rectitude of all legal proceedings, and all decisions made are presumed correct until the contrary appears, and therefore if an exception involves the sufficiency of the facts proved, as this does, it should be shown that the evidence detailed is *all* which was given to the point. Stearns v. Warner, 2 Aik., 26; Richardson v. Denison, 1 Aik., 210; The People v. Bodine, 1 Denio, 281.

It is nowhere stated in the record that the evidence there recited is *all* that was given, and this Court, it is submitted, will not reverse the decision of the judges below unless compelled by manifest error.

2d. But the substantial and meritorious ground upon which the learned judge below overruled the said prayer was, that there was testimony given in the case from which a jury might fairly and reasonably find a verdict for the Defendant.

The rule of law is too well established that a demurrer to evidence admits not only the facts stated therein, but also every conclusion which a jury might fairly or reasonably infer therefrom, to need authority. Parks v. Ross, 11 How., 373, or as applied more particularly to circumstantial evidence, it admits every fact and every conclusion which the proposed evidence conduces to prove. 2 Phillips on Ev., 1009.

Tested by these rules, the question at once arises, can no reasonable inference be drawn from the fact: That three notes of a wealthy gentleman, all of the same date, in the same handwriting, for a like amount, and of a regular series of thirty, sixty, and ninety days, given at one time and in the same transaction, are found payable to a professional gambler at a time when he is a keeper of a public gaming-house, and has no other ostensible business, and a man of no property with which he might engage in lawful commerce: From the fact that the body of each of these notes was in the handwriting of one John R. James, a professional gambler and frequenter of the gambling-house of the said payee: and from the additional fact that a fourth of the same series and like handwriting as the others, of the same date, and for the same amount, is found payable to the order of one John Campbell, who was not only a frequenter of the gaming-house of the said Steer, but in his employment as a dealer of faro? We ask, is it not a fair inference for these facts that these notes had their origin in the gaming-house of the payee, and in the ordinary business which was carried on there? But these facts do not stand alone. It was further shown, that on the early morning of the very day the notes were given, that the Defendant was in a grossly intoxicated state, and no more seen that day, and when in that condition he exhibited an invariable habit of frequenting such places, and which he did at no other time. Are not the inferences that these notes were made in the common *rendezvous* of the said gamblers, and for a gaming debt, rendered immeasurably stronger, when we find the victim of their arts in such a state as to be not only deprived of his judgment, and thereby an easy prey, but from the condition he was in uncontrollably impelled to gambling?

There are so many circumstances, all interlacing and depending upon each other, and all pointing towards the same result; all reconcilable with the hypothesis of the defence, and improbable with any other, that we respectfully submit the Court was right in refusing to say to the jury that there was no evidence tending to prove the defence, or from which a reasonable inference of its truth might not be drawn.

Third Prayer.

The 3d prayer of the Plaintiff asks the Court to say to the jury, that if they are not satisfied by the evidence that Francis Steer kept a gambling-house at the date of the notes, then the drunkenness of the Defendant cannot be relied upon to invalidate the notes in the hands of the Plaintiff.

This prayer the Court refused to give, not that it intended to say that drunkenness was a good defence to a promissory note in the hands of an innocent holder, for it was neither so contended for by the De-

fendant's counsel, nor intimated by the Court. It was rejected because—

1st. It only gave a partial enumeration of the facts proved and applicable to the point. The courts have decided again and again that where a number of facts have been proved, a prayer making a partial enumeration of them, and thereupon asking an instruction to the jury, should not be granted, if not sustained by a consideration of all the facts proved which belong to the question, and all such facts as are necessarily the subject of consideration by the Court as if embraced in the enumeration. Bosley v. The Chesapeake Ins. Co., 3 G. & J., 450; Burt v. Gwinn, 4 H. & J., 517; Riggin v. The Patapsco Ins. Co., 7 H. & J., 291.

This prayer omits the important facts that the notes themselves were in the handwriting of another gambler, an habitue of Steer's house; that another note was given at the same time, and for a like amount, to another gambler employed by Steer, and that the Defendant was in the invariable habit of gambling when intoxicated, and at no other time.

2d. The prayer makes the entire proof depend upon the fact that Steer kept a gambling-house, which it should not do. Steer might have been a gambler, and the notes given for a gaming debt, although he did not in point of fact keep the house. It was impossible for the Court to say to the jury, if you believe Steer did not keep the house, you must then believe he was no gambler, and the notes not given for a gaming consideration, as there is no necessary connection between the two facts.

FOURTH PRAYER.

The Plaintiff's 4th prayer asks the Court to instruct the jury that the only evidence in the case tending to repel the presumption of law in favor of the legality of the notes consists of the facts that the maker was grossly intoxicated and incapable of acting with understanding at one or two o'clock on the morning of the day on which the notes were dated, and that the payee kept a gambling-house, and that as against a *bona fide* holder without notice these are not sufficient to overcome the presumption of the law in favor of the legality of said notes. This prayer was rejected, because there was other evidence tending to prove the issue.

If the Court committed no error in allowing evidence to go to the jury that Steer, the payee of the notes, was a gambler; that the notes were in the handwriting of another gambler—a frequenter of Steer's place; that another note bearing the impress of being made at the same time and in the same transaction; that Steer was engaged in no other business than gambling; and that the maker of the notes was in the invariable habit of attending such places and gambling when intoxicated, and at no other times, then the Court committed no error in refusing this prayer. It has only a partial enumeration of the facts, and is equally faulty as the 3d prayer.

FIFTH PRAYER.

The fifth prayer of the Plaintiff says: That in the absence of all evidence to fasten notice on the Plaintiff, at the time of the endorse-

ment of said notes, of the facts given in evidence by the Defendant as aforesaid, the law presumes in favor of the legality of the consideration of said notes in favor of the holder.

This prayer was rejected.

It is no doubt true in regard to negotiable securities, that the law always, in the absence of proof to the contrary, presumes in favor of the legality of their consideration, and the Court so instructed the jury in granting Plaintiffs' first prayer. But this presumption of legality, when the defences of usury, gaming, the note of a married woman, or of a non compos mentis are set up, are not dependent upon the fact that the holder had notice or not, but on the question whether these defences be true. The want of consideration, or any defence, which renders the note only voidable, cannot be relied upon by the maker without notice be first fastened upon the holder; and, in the absence of all notice, the law presumes in favor of the legality of the consideration; and if these latter had been the defence, the instruction would have been proper. But, in the case under consideration, the note is absolutely void if the defence be true, irrespective of notice to the Plaintiff. The prayer denies, in effect, this proposition, because it makes the right of the Defendant to recover depend upon whether the Plaintiff had notice of the illegal consideration, when the authorities abundantly show that this defence is available against a *bona fide* holder for value, *without notice*, and for a valuable consideration. The Court was therefore right in rejecting this prayer.

This subject of notice, and the character of this defence, are previously discussed under the head of the Defendant's prayer.

Sixth Prayer.

The Plaintiff's sixth prayer is: If the jury are not satisfied from the evidence that the said Steer kept a gambling-house at the date of said notes, then there is no sufficient evidence of said notes being executed for an illegal consideration, although the jury may find that the Defendant was intoxicated at the time, and in the manner stated in the evidence.

The fault of this prayer is identical with that of the Plaintiff's third prayer. It demurs to all the evidence given, except the facts that Steer kept a gambling-house, and the Defendant's intoxication, and thereby says that no presumption whatever can be drawn from the evidence not mentioned. We have already attempted to show that the circumstantial evidence in this case was sufficient to authorize its admission to the jury. It is unnecessary to enlarge upon it further.

Seventh Prayer.

The Plaintiff's seventh prayer asks the Court to instruct the jury that, in the absence of direct evidence of the consideration of said notes, it is competent for the jury to find that the said notes were given for a legal consideration passing between the parties, and the Plaintiff, as holder of said notes, is entitled to the benefit of the presumption of legality in the consideration of the notes as evidence.

This prayer was granted, with a modification, on application of Defendant, by inserting the words, "but are not bound" after the word competent.

The effect of this prayer is, to say that circumstantial evidence, as technically distinguished from direct evidence, cannot be relied on to prove the defence.

Without entering into any argument to disprove this proposition, by showing that sometimes circumstantial evidence is even more convincing in its character than direct, it is perhaps only necessary to say, that we know of no rule of law which prevents an issue in a civil cause from being proved by presumptive proof, but, on the contrary, affirm that at all times such evidence has been received for that purpose, without contradiction. If such was not the case, many of the most flagrant frauds might be committed and go unredressed—cases, too, where both of the offending parties seek concealment, and are usually successful in placing themselves beyond the reach of direct testimony; cases of conspiracy to defraud, where the act is done in secret, and where you are thrown, as the only resource, upon such circumstances as would lead the guarded discretion of a reasonable and just man to the conclusion. 1 Phillips on Ev., note 177. The following are cases in which circumstantial evidence alone proved the issue. Loveden v. Loveden, 2 Hagg. Consist. Rep., 1; Cadogan v. Cadogan, 2 Hagg. Consist. Rep. 4 u.; State v. Green, Kirb., 87; Aston v. Aston, 1 Ves., 268; Watkins v. Stocketts Adm'r., 6 Harr. & John, 435; Brogden v. Watkin's Ex., 2 H. & J., 292; The Short Staple, Gallis, 104.

If such was not the case, the present system of evidence would be unworthy of the high reputation it enjoys, and totally unfit to be the medium of enforcing the rights of civilized society. We apprehend, however, the Court will have no difficulty on account of this prayer.

All of which is respectfully submitted.

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